

BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

JEFFREY R. BEARD
122 Claremont Crest Court
San Ramon, California 94583

Physical Therapy License No. 15403

Respondent.

OAH No. N 2002070647

Case No. D1 1999 62211

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on September 24, 2002, in Oakland, California.

Jane Zack Simon, Deputy Attorney General, represented the complainant Steven K. Hartzell.

There was no appearance by or on behalf of respondent Jeffrey R. Beard.

The matter was submitted on, September 24, 2002.

FACTUAL FINDINGS

1. Steven K. Hartzell made the Petition to Revoke Probation in his official capacity as Executive Officer of the Physical Therapy Board (Board).

2. On January 3, 1989, the Board issued Physical Therapy License number 15403 to Jeffrey R. Beard (respondent). The license is scheduled to expire on April 30, 2004.

3. Effective July 2, 2001, the Board revoked respondent's license. However, the revocation was stayed and respondent was placed on probation for five (5) years on stated terms and conditions that included the following:¹

“14. Within 90 days of the effective date of this decision, respondent shall take and pass the board’s written examination on the laws and regulations governing the practice of physical therapy in California. If respondent fails to pass the examination, respondent shall be suspended from the practice of physical therapy until a repeat examination has been successfully passed.

24. Within 30 days after the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric or psychological evaluation and psychological testing, if deemed necessary. A board-appointed psychiatrist or psychologist shall perform the evaluation and furnish an evaluation report to the board or its designee. Respondent shall pay all the costs of the evaluation.

26. Respondent shall not engage in the practice of physical therapy until notified by the board or its designee of its determination that respondent is mentally fit to practice safely.

28. Respondent shall pay the actual and reasonable costs of investigation and prosecution of this case in the amount of \$6,327.00. Respondent shall make the reimbursement within 30 days from the effective date of this decision unless the board agrees in writing to payment on an installment plan. Failure to make the ordered reimbursement, or any agreed upon payment, may constitute a violation of the probation order.”

4. Pursuant to probation condition 14 respondent was required to take and pass the Board’s written physical therapy examination within 90 days of July 2, 2001. As of October 1, 2001, respondent had not taken the examination. On October 1, 2001, respondent and James Ackley, respondent’s probation monitor, met to review the terms and conditions of respondent’s probation. Respondent confirmed that he was aware he had to take the written physical therapy examination but told Ackley that it was a “low priority” and that he had no plans to take the test at that time because he was too busy finding work and trying to earn an income. As of the date of the hearing in this matter respondent still had not applied to take the examination.

¹ Discipline was imposed against respondent's license pursuant to a decision in Case No. 1-D 1999 6221. The decision was adopted by the Board on May 31, 2001, and became effective July 2, 2001. The Board found that cause for discipline against respondent’s license existed pursuant to Business and Professions Code section 2660, subdivision (i) because respondent had committed an act of sexual abuse and misconduct (inappropriate touching of two female patients) in violation of Business and Professions Code section 726.

5. Probation condition 24 requires respondent to undergo a psychiatric or psychological evaluation and psychological testing, if deemed necessary by a board appointed psychiatrist or psychologist within 30 days of July 2, 2001. Ackley advised respondent on October 1, 2001, that respondent was required to comply with probation condition 24 and provided him with a list of approved experts. He further advised respondent that he had 30 days from October 1, 2001, to comply with probation condition 24 since he had not received the list of approved experts until October 1. Respondent told Ackley that he was not going to comply with this probation condition because he did not have the time or the money and he had already been seen by his private psychiatrist. He also stated "the Board doesn't give a dam about me, they just want my money too." As of the date of the hearing in this matter respondent still had not undergone a psychiatric or psychological evaluation by a board appointed psychiatrist or psychologist.

6. Pursuant to probation condition 26 respondent is prohibited from the practice of physical therapy until the Board or its designee notifies him of its determination that he is mentally fit to practice safely. As of the date of hearing in this matter respondent still had not obtained a psychiatric or psychological evaluation or an opinion that he was mentally fit to practice.

7. Probation condition 28 requires respondent to pay the Board cost recovery totaling \$6,327.00. Respondent had not made a single payment toward reimbursement of the Board for its costs as of the date of the hearing in this matter.

8. On or about September 3, 2002, Ackley and respondent had a telephone conversation regarding the status of respondent's probation. During the course of the conversation respondent stated that he was tired of dealing with the Board and that he would not attend the previously scheduled September 6, 2002, probation interview. Respondent also stated that he was going to surrender his license and that he did not want anything further to do with physical therapy or the Board. The Board has declined to accept surrender of respondent's license.

9. The Board certifies that the following costs were incurred in connection with the investigation and prosecution of the Petition to Revoke Probation as of September 2, 2002:

Attorney General Fees

2001-2002	2 hours @ \$112.00 per hour	\$224.00
2002-2003	1.5 hours @ \$112.00 per hour	\$168.00

Senior Legal Analyst Fees

2001-2002	8.75 hours @ \$53.00 per hour	\$463.75
2002-2003	11.5 hours @ \$53.00 per hour	<u>\$609.50</u>

TOTAL COSTS INCURRED: **\$1,465.25**

10. No evidence was submitted by or on behalf of respondent.

LEGAL CONCLUSIONS

1. Cause exists to revoke probation and reimpose the order of revocation in that respondent has failed to comply with the terms and conditions of his probation. Specifically, as set forth in Findings 4 through 7, respondent has violated conditions 14, 24, 26 and 28 of his probation.

2. Business and Professions Code section 2661.5 provides that in any order issued in resolution of any disciplinary proceeding before the Board the respondent may be ordered to pay the Board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case. The evidence established that the reasonable costs of investigation and prosecution of the Petition to Revoke Probation were \$1,465.25.

ORDER

1. Physical Therapy License number 15403 issued to Jeffrey R. Beard is revoked. The stay order previously imposed in Case No. 1D 1999 62211 is vacated and the order of revocation is reinstated.

2. Respondent shall pay the Board \$1,465.25 for the reasonable costs of investigation and prosecution of the Petition to Revoke Probation.

DATED: ____11/01/02_____

____Original signed by_____
CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings